

# Order

Entered: February 25, 2004

**Michigan Supreme Court  
Lansing, Michigan**

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

ADM File No. 2003-50

Amendment of Rules  
Rules 3.915, 3.965, 3.975,  
3.976, and 3.977 of the  
Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments are adopted, effective immediately.

[The present language is amended as indicated below by underlining  
for new text and strikeover for text that is deleted.]

## Rule 3.915 Assistance of Attorney

(A) [Unchanged.]

(B) Child Protective Proceedings.

(1) [Unchanged.]

(2) Child.

- (a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d) and if the attorney has not met with the child, the court shall require the lawyer-guardian ad litem to state, on the record, his or her reasons for failing to do so.

(b) [Unchanged.]

(C) [Unchanged.]

(D) Duration.

- (1) An attorney retained by a party may withdraw only on order of the court.
- (2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule.

(E) [Unchanged.]

#### Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1) - (12) [Unchanged.]

- (13) The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care. If the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father.

(C) - (D) [Unchanged.]

(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:

(1) - (4) [Unchanged.]

The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child's attending physician of record or primary care physician.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A) [Unchanged.]

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR. 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) - (H) [Unchanged.]

Rule 3.976 Permanency Planning Hearings

(A) [Unchanged.]

(B) Time.

(1) - (2) [Unchanged.]

(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.

(C) Notice. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a

brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(D) [Unchanged.]

(E) Determinations; Permanency Options.

(1) [Unchanged.]

(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings, ~~no later than 42 days after the permanency planning hearing,~~ to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within which the petition must be filed, which may not be more than 42 days after the date of the order.

(3) [Unchanged.]

#### Rule 3.977 Termination of Parental Rights

(A) - (B) [Unchanged.]

(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court's caseload.

(D) - (J) [Unchanged.]

Staff Comment: The February 25, 2004, amendments of MCR 3.915, 3.965,

3.975, 3.976 and 3.977, effective immediately, are based on recommendations from the Family Independence Agency and Supreme Court Adoption Work Group.

The amendment of MCR 3.915(B)(2)(a) is designed to enforce the statutory requirement in MCL 712A.17d that lawyers-guardians ad litem for children meet with their clients before each hearing.

The amendment of MCR 3.915(D)(2) addresses the substitution of lawyers-guardians ad litem.

The amendments of MCR 3.965 (B)(13) and (E) require the court to ask parents, guardians, or legal custodians to identify relatives who might be available to care for the child. The amendment to subsection (E) also requires the court to ask parents, guardians, or legal custodians to identify the child's treating physician in certain circumstances. See MCL 712A.18f(6).

The amendments of MCR 3.975(B) and MCR 3.976(C) require the court to notify interested parties that they may provide input at dispositional review and permanency planning hearings.

The amendments of MCR 3.976(B)(3) and (E)(2) encourage early holding of permanency planning hearings and early filing of petitions for termination of parental rights, where appropriate.

MCR 3.977(C)(2) is a new provision that requires courts to give child welfare cases priority in scheduling.

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 25, 2005

*Corbin R. Davis*  
Deputy Clerk